

M e m o r a n d u m

To : Mr. Ramon J. Hirsig
Executive Director, MIC:73

Date: November 22, 2006

From : Kristine Cazadd, Chief Counsel
Legal Department, MIC:83

Subject : Regulation 1591, *Medicines and Medical Devices*,
Regulation 1591.2, *Wheelchairs, Crutches, Canes, and Walkers*, and
Regulation 1591.4, *Medical Oxygen Delivery Systems*
Chief Counsel's Rulemaking Calendar
Board Meeting—December 12, 2006

Assembly Bill (AB) 646 (Ch. 706, Statutes of 2001), operative April 1, 2002, amended Revenue and Taxation Code section 6369 to include specified clinics in the definition of a health facility for purposes of the exemption from sales and use tax for medicines furnished by a health facility. To incorporate this provision, we request your approval to place proposed amendments to the regulations that include a definition of a health facility, Regulations 1591, 1591.2 and 1591.4, on the Chief Counsel's Rulemaking Calendar on December 12, 2006. Proposed amendments to Regulation 1591 also include two grammatical revisions. These changes are appropriate to process under Rule 100, without the normal notice and hearing process, because the proposed amendments are changes without regulatory effect and are revising grammar or would make the regulations consistent with a statutory change.

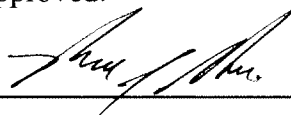
The strikeout and underlined versions of the regulations are attached. If you have any questions regarding this request, please let me know or contact Ms. Lisa Andrews at 322-5989.

Recommendation by:



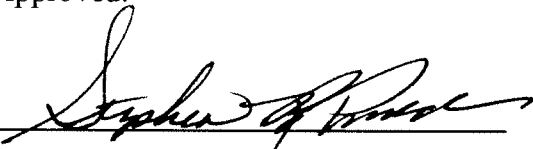
Kristine Cazadd, Chief Counsel

Approved:



Ramon J. Hirsig, Executive Director

Approved:



for Randie L. Henry, Deputy Director
Sales and Use Tax Department

BOARD APPROVED

At the _____ Board Meeting

Gary Evans, Acting Chief
Board Proceedings Division

Proposed Amendments to Regulation 1591.2

Regulation 1591.2. WHEELCHAIRS, CRUTCHES, CANES, AND WALKERS.

Reference: Sections 6006, 6369, and 6369.2, Revenue and Taxation Code, and sections 1200, 1200.1, 1204.1, and 1250 Health and Safety Code.

(a) DEFINITIONS.

(1) PHYSICIAN. For purposes of this regulation, "physician" means and includes any person holding a valid and unrevoked physician's and surgeon's certificate or certificate to practice medicine and surgery, issued by the Medical Board of California, the Osteopathic Medical Board of California, or the California Board of Podiatric Medicine. Physician, as defined, includes doctors of medicines (MD), doctors of osteopathy (DO), and doctors of podiatric medicine (DPM).

(2) PRESCRIPTION. "Prescription" means an oral, written, or electronic transmission order that is issued by a physician, dentist, optometrist, or podiatrist licensed in this state and given individually for the person or persons for whom ordered. The order must include all of the following:

(A) The name or names and address of the patient or patients.

(B) The name and quantity of the drug or device prescribed and the directions for use.

(C) The date of issue.

(D) Either rubber stamped, typed, or printed by hand or typeset, the name, address, and telephone number of the prescriber, his or her license classification, and his or her federal registry number, if a controlled substance is prescribed.

(E) A legible, clear notice of the conditions for which the drug is being prescribed, if requested by the patient or patients.

(F) If in writing, signed by the prescriber issuing the order.

(3) HEALTH FACILITY. "Health Facility" as used herein has the meaning ascribed to the term in Section 1250 of the Health and Safety Code, ~~which provides that:~~ and also includes "clinic" as defined in sections 1200 and 1200.1 of the Health and Safety Code.

(A) ~~"As used in this chapter~~ Section 1250 of the Health and Safety Code provides that "health facility:" means any facility, place or building that is organized, maintained, and operated for the diagnosis, care, prevention, and treatment of human illness, physical or mental, including convalescence and rehabilitation and including care during and after pregnancy, or for any one or more of these purposes, for one or more persons, to which the persons are admitted for a 24-hour stay or longer.

(B) Section 1200 of the Health and Safety Code provides that "clinic" means an organized outpatient health facility which provides direct medical, surgical, dental, optometric, or podiatric advice, services, or treatment to patients who remain less than 24 hours, and which may also provide diagnostic or therapeutic services to patients in the home as an incident to care provided at the clinic facility. A place, establishment, or institution which solely provides advice, counseling, information, or referrals on the maintenance of health or on the means and measures to prevent or avoid sickness, disease, or injury, where such advice, counseling, information, or referrals does not constitute the practice of medicine, surgery, dentistry, optometry, or podiatry, shall not be deemed a clinic for purposes of this subdivision.

(C) Section 1200.1 of the Health and Safety Code provides that "clinic" also means an organized outpatient health facility which provides direct psychological advice, services, or treatment to patients who remain less than 24 hours. As provided in section 1204.1 of the Health and Safety Code, such clinics serve patients under the direction of a clinical psychologist as defined in section 1316.5 of the Health and Safety Code, and are operated by a nonprofit corporation, which is exempt from federal taxation under paragraph (3), subsection (c) of section 501 of the Internal Revenue Code of 1954, as amended, or a statutory successor thereof, and which is supported and maintained in whole or in part by donations, bequests, gifts, grants, government funds, or contributions which may be in the form of money, goods, or services. In such clinics, any charges to the patient shall be based on the

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patient's ability to pay, utilizing a sliding fee scale. Such clinics may also provide diagnostic or therapeutic services authorized under Chapter 6.6 (commencing with section 2900) of Division 2 of the Business and Professions Code to patients in the home as an incident to care provided at the clinic facility.

(b) TAX APPLICATION. Tax does not apply to the sale or use, including leases that are continuing sales and purchases, of wheelchairs; crutches; canes; quad canes; white canes used by the legally blind; walkers; and replacement parts for these devices when sold to an individual for the personal use of that individual as directed by a licensed physician. Electric three-wheel scooters that are similar in both design and function to a conventional electric wheelchair, qualify as a wheelchair for the purposes of Revenue and Taxation Code section 6369.2. When the scooters are sold or leased to an individual for the personal use of that individual as directed by a licensed physician their sale or use qualifies for an exemption from tax.

"Replacement parts" include, but are not limited to, batteries for electric wheelchairs; belts and cushions sold to replace or supplement the basic items originally sold with wheelchairs, lap boards and trays attached to wheelchairs and considered a part of the wheelchair; and rubber tips, wheels, and other such items prescribed for an individual to replace an original component of the device sold. "Replacement parts" do not include items such as mechanical devices that aid the patient in eating or writing unless the items are part of the device itself, or restraints or other such items sold to an individual, but which do not become a part of the wheelchair or other such prescribed device.

(c) SALES TO HEALTH FACILITIES. Sales, or leases that are continuing sales and purchases, of wheelchairs, crutches, canes, and walkers to hospitals or other health facilities for use by patients while at the facilities are subject to tax. Such sales or leases are not considered sold to an individual for the individual's personal use as directed by a physician. However, when wheelchairs, crutches, canes, and walkers are ordered by a hospital or health facility on behalf of a specific patient, as directed by a physician, the items may be considered to be purchased by an individual for his or her own personal use as required under Revenue and Taxation Code section 6369.2 and, therefore, the sale will qualify for exemption from tax.

(d) SALES TO INSURED PERSONS. The exemption for qualifying retail sales of wheelchairs, crutches, canes, quad canes, white canes used by the legally blind, walkers, and replacement parts for these devices is not affected by the fact that charges to the individual to whom such items are sold, may be paid, in whole or in part, by an insurer. This is so even though a joint billing may be made by the retailer in the name of both the person and the insurer.

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